S. PAKIANATHAN

v.

JENNI IBRAHIM & ANOTHER CASE

SUPREME COURT, KUALA LUMPUR
WAN HAMZAH SCJ
GEORGE SEAH SCJ
HASHIM YEOP SANI SCJ
[CIVIL APPEAL NO. 25 OF 1986]
11 MARCH 1988

TORT: *Defamation - Correspondence - Whether statements defamatory - Whether published to third parties - Defence of justification - Defence of qualified privilege - Whether there was malice.*

This was an appeal to the Supreme Court against the decision of the High Court which awarded RM30,000 as damages to the respondent. The respondent alleged that the appellant had falsely written and published defamatory words of her in the way of her occupation as a director of a private drug rehabilitation centre in four letters written by the appellant. The centre was a company limited by guarantee. The appellant was the chairman of the board of directors and its executive managing director. One of the letters was addressed to the Chief Police Officer that there were irregularities in the accounts and that the respondent was a signatory to certain cheques. In the second letter addressed to the former secretary of the centre he was advised to ask the respondent to reimburse certain sums of money. The third letter which was addressed to the respondent stated that a police report would be lodged for breach of trust by the respondent. In the fourth letter, it was alleged that the respondent had committed breach of trust and copies of the letter which was addressed to the former secretary of the centre was sent to the directors of the centre, the director of welfare and the registrar of companies. The defence was there was justification and alternatively it was published on an occasion of qualified privilege.

Held:

[1] The letter to the Chief Police Officer did not allege that the respondent had committed any criminal offence. Even if the letter contained an imputation of a criminal act, the appellant would not have been liable as such a complaint to the police would be privileged.

[2] The second letter which was addressed to the former secretary of the centre did not impute that the respondent had committed any criminal act.

[3] It was not pleaded in the statement of claim that the third letter which was addressed to the respondent had been published to third persons. This was a requirement for the cause of action to succeed.

[4] The burden was on the appellant to prove that the defamatory words contained in the fourth letter was true. The appellant did not discharge his burden of proving that there was justification in making the statements.

[5] The defence of qualified privilege would apply where the communication was made *bona fide* by the party making it where he had an interest and duty to a person having a corresponding interest or duty even though the statement was defamatory and untrue. This defence could not be availed if there was express malice by the appellant. Although the appellant had a duty and interest to send the letter to the directors of the centre and the

director of welfare and they had a duty and interest to receive it, there was malice by the appellant. He should have inquired from the Chief Police Officer of the result of the investigations. Further, it was shown that he was vindictive as he was removed as executive managing director and replaced by the respondent. Thus, the defence of qualified privileged did not apply. The damages was reduced to RM15,000.

[Appeal dismissed with costs.]

Cases referred to:
Shufflebottom v. Allday [1857] 5 WR 315
Wennhak v. Morgan [1880] 20 QBD 637
Barham v. Lord Huntingfield [1913] 2 KB 193
Bett v. Lawes [1882] 51 LJQB 361
Peters v. Brodlaugh [1884] 4 TLR 467
Watt v. Longsdon [1930] 1 KB 130
Harrison v. Bush [1855] 5 E & B 348
Adam v. Ward [1917] AC 334
Pittard v. Oliver [1891] QBD 474
Lee v. Ritchie [1904] 6 F 642

For the appellant - Chan Kok Keong; M/s. Nik Saghir, Yaacob & Ismail
For the respondent - G. Moganasundram; M/s. Mogan & Co.

JUDGMENT

Wan Hamzah SCJ:

The respondent sued the appellant in the High Court for damages for libel. Ajaib Singh J gave judgment for the respondent and awarded damages in the sum of RM30,000. The appellant now appeals to the Supreme Court against that judgment and award. The respondent alleged that the appellant had falsely written and published defamatory words of her and of her in the way of her occupation as a director of the Pusat Pertolongan Berhad (the Pusat) and in relation to her conduct therein, to certain persons in three letters dated 7 September 1981, 1 October 1981, and 2 October 1981 respectively, and in another letter dated 13 October 1981 with a list of proposed resolutions attached to it. She averred that in their natural and ordinary meaning those words meant and were understood to mean that during her term of office with the Pusat she had committed breach of trust and converted to her own use monies belonging to the Pusat and had committed a criminal offence, and in consequence she has seriously been injured in her character, credit and reputation and has been brought into public scandal, odium and contempt. We shall deal with the letters separately one by one and set out a copy of each of the letters fully and underline the words which the respondent alleged were defamatory. First we shall state the facts of the case.

The Pusat was a company limited by guarantee, incorporated in 1978 under the Companies Act. It was established for the main object of supporting an organisation for the treatment and rehabilitation of drug dependents. It obtained approval of the Minister of Welfare Services under the Dangerous Drugs Act to establish two private rehabilitation centres for the treatment and rehabilitation of drug dependants, one at Batu Gajah and the other at Kampong Bercham, Ipoh. The Private Rehabilitation Centre Rules 1981 made under the Act applied to the Pusat and its rehabilitation centres. The Rules required that proper accounts and records should be kept of all income and expenditure in respect of the operation of all funds at the disposal of the management committee of a rehabilitation centre. Among the first directors of the Pusat were Encik Yakob Abdul Rahman Scholar

and Encik Azman bin Abdul Aziz. Subsequently the appellant, the respondent and Encik Chew Peng Loon also became directors. At the first meeting of the Board of Directors on 4 September 1980 Encik Yakob was confirmed as the executive managing director and Encik Azman as the secretary of the Pusat. It was resolved at that meeting that the account of the Pusat at the bank be operated by Encik Yakob with either one of the two directors namely the respondent and Encik Chew Peng Loon. On 29 June 1981 the second annual general meeting of the Pusat was held. The meeting was informed that Encik Yakob was then in West Germany on two years leave of absence from his appointment as the executive managing director. At that meeting the appellant was elected as the chairman of the board of directors and also as the executive managing director, and the respondent was re-elected as a director. In the minutes of that annual general meeting it was recorded *inter alia* as follows:

> The chairman noted that as the Statement of Accounts and Reports for the years 1979 and 1980 are incorrect, he has directed the staff to check the book, receipts, vouchers etc. of the Foundation for this period. He expected the checking exercise to be completed within two months. The Chairman also pointed out that the Auditors Report as required under the Companies Act 1965 was not attached to the Financial Statements being currently reviewed.

The meeting decided that the Statements of Accounts for the period 1 January 1979 to 31 December 1980 be re-audited and submitted for consideration at an extra-ordinary general meeting to be held within two months.

On 26 August 1981 an emergency meeting of the board of directors was held to consider a petition sent by the staff of the Pusat to the Board. In answer to the petition the appellant addressed the meeting for approximately two hours concerning the reasons why he had acted as he had as the Chairman and the executive managing director. The Board decided that the appellant should remain as Chairman of the Board but the respondent should take over from him as the executive managing director. On 7 September 1981 the appellant wrote to the Chief Police Officer Perak the letter which the respondent alleged in this suit to be defamatory of her. On 8 September 1981 a meeting of the Board of Directors was held. Among the matters discussed at that the meeting was the letter dated 7 September 1981 written by the appellant to the Chief Police Officer. The Board requested the executive managing director to write to the Chief Police Officer and explain that the letter had been sent by the appellant without the Board's knowledge and consent. On 1 October 1981 the appellant wrote a letter to Encik Azman which the respondent alleged in this suit was libellous of her. On 2 October 1981 the appellant wrote to the respondent a letter which the respondent alleged in this suit was libellous of her. On 13 October 1981 the appellant wrote to Encik Azman about the meeting of the Board of Directors to be held on 21 October 1981, with a list of proposed resolutions attached to the letter, which the respondent alleged in this suit to be libellous of her.

We now proceed to deal with the letters alleged to be libellous.

Letter dated 7 September 1981

The following is a copy of the letter:

> 7hb.September 1981
>
> Dato' Ketua Polis Negeri Perak,
> **(U/P Encik Ahmad bin Abdul Hamid)**
> Ibu Pejabat Kontijen Polis,
> Polis DiRaja Malaysia,
> Perak, IPOH.

Dato',

Per: **Permohonan untuk mengutip derma dari rumah ke rumah dan jalan lesen 67/81 (28662)**

Saya merujuk kepada perkara diatas dan saya mengembalikan Lesen 67/81 (28662) yang ingin saya batalkan.

Merujuk kepada surat saya bertarikh 16hb. Mac 1981 pada Dato dan pertemuan saya untuk mendapat jasa baik Dato dalam perkara ini, **saya dapati beberapa perkara yang tidak menyenangkan pada masa ini.**

Dengan rengkasnya perkara-perkara tersebut ada seperti:

(1) Dalam Mesyurat Agung Tahunan Pusat Pertolongan Bhd. yang telah diadakan pada 29hb. Jun 1981 telah dilaporkan kira-kira penyata bagi tahun 1979 dan 1980 tidak betul sesungguh pun telah di tandatangani oleh Hashim Mohammad & Co. yang beralamat 72, Market Street, 3rd Floor, Ipoh. Bagi tiap-tiap tahun wang sejumlah lebihkurang RM90,000 telah tidak di masukkan dalam kira-kira penyata.

(2) Bagi tempoh 1 Januari 1981 ke 30 Mei 1981 sejumlah lebih kurang RM18,000 telah tidak di masukkan dalam penyata sungguh pun cek-cek tersebut telah di tandatangan oleh dua orang pengarah Encik Chew Peng Loon dan Puan Jenni Ibrahim.

(3) Merujuk sumbangan dari Kerajaan Negeri melalui Pengarah Kebajikan Masyarakat Perak sebahagian daripada wang tersebut telah dipindahkan ke USA sebagai biasiswa yang tidak dilapurkan kepada Lembaga, atau pun dilapurkan didalam penyata-penyata pada tahun tahun yang lain pun.

(4) Semua penghuni dalam Pusat Pertolongan dikenakan bayaran dan pendapatan dari bayaran penghuni bagi bulan Julai 1981 berjumlah RM35,992 dan perbelanjaan berjumlah RM27,365.44. Keuntungan tiap-tiap bulan berjumlah L/K RM8,626.56 boleh diperbelanjakan untuk activiti-activiti yang dinyatakan dalam surat rayuan saya bertarikh 16 Mac 1981.

Saya ucapkan ribuan terima kasih atas kerjasama dari pehak Dato. Sekiranya dikehendaki sebarang pertolongan yang berfaedah yang diputuskan oleh Lembaga dan disokong oleh Pengarah Kebajikan Masyarakat Perak, pada masa masa yang akan datang saya akan menemui Dato dan meminta bantuan dari pehak Dato.

Sekian, terima kasih,

Dengan hurmatnya,

t.t.
S. Pakianathan
(Pengerusi)

We find nothing in the above letter which can be understood as alleging that the respondent had converted any money for her own use or had committed breach of trust or any other criminal offence. The mere reference to the fact that the respondent was one of the signatories to certain cheques is not sufficient to raise such inference. All that the letter conveyed was information about certain irregularities in the keeping of account and a request for assistance to investigate. In the statement of claim the Chief Police Officer was the only person to whom it is alleged that the content of the letter had been published. Even if the letter had contained an imputation of a criminal act, the appellant would not have been liable for publishing it to the Chief Police Officer. It is the public duty of everyone who knows, or reasonably believe, that a crime had been committed to assist in the discovery of the wrongdoer. Any complaint made, or information given, for that purpose to the police, will in the interests of society be privileged: *Shufflebottom v. Allday* [1857] 5 WR 315.

Letter dated 1 October 1981.

The letter reads as follows:

Encik Azman bin Abdul Aziz
d/a Pusat Pertolongan
Kampong Bercham,
P. O. Box 17, Taman Ipoh,
Ipoh.

Dear Mr. Azman,

I refer to your letter dated 30 September 1981 enclosing application forms and minutes of meeting dated 8 September 1981.

With reference to para. 8 p. 4 of your minutes after the words "and consent" insert "the allegations contained in the letter are being investigated and a report will be sent in due course" or words to that effect.

I take this opportunity to reiterate that your tenure as Secretary was terminated at the AGM dated 29 June 1981 and as such it is more appropriate that you sign all letters with the notation "b.p. Setiausaha".

In respect of the Rehabilitation Centre Licence No. KKA 4045/JD 111 (37) dated 2 September 1981 please do not communicate with any third party on my behalf as Pengerusi of Pusat Pertolongan or as licencee without my written consent and also ensure that all letters addressed to me are re-directed to my address.

I notice, by oversight, you have neglected the sum of RM500 paid as subscription for membership in respect of 10 proposals submitted to you on 6 July 1981 (enclosed please find copy of receipt A 5296).

With reference to the Audited Annual Accounts for the periods ending 31 December 1979 and 31 December 1980 the profits (excess) of RM24,799.15 and RM45,234.78 respectively are not entered into our Bank Accounts on 1 January 1980 and 1 January 1981. In view of the non-cooperation attitude taken by senior staff and certain Directors, it is imperative that you advise Jenni Ibrahim to reimburse these amounts into our Bank Accounts within seven (7) days of date of this letter to avoid embarrassing the Directorate. As soon as these amounts are deposited into our Bank accounts please advise me.

Your co-operation is appreciated.

Yours faithfully,

Sgd.
S. Pakianathan JP
(Pengerusi)
Pusat Pertolongan

Again we find nothing in the above letter which can be understood as alleging that the respondent had converted the money for her own use, or committed breach of trust or any other criminal offence. It is true that it was stated in the letter that the respondent should be advised to reimburse the sums of money which were allegedly not shown in the bank statements of account as having been paid into the bank, but a person in charge of money may be asked to make good any loss of money which was not paid into the bank, and such request does not necessarily amount to an imputation that he himself had been guilty of misappropriation. The request may be made because of his carelessness in having failed to ensure that the money was kept in the bank.

Letter dated 2 October 1981

The following is a copy of the letter:

Puan Jenni Ibrahim,
21, Tambun Height,
Tambun,
Perak.

Dear Puan Ibrahim,

Frankly I would not bother to write to you except for the fact that a total sum of RM70,033.93 as shown in the Audited Accounts for periods ending 31 December 1979 and 31 December 1980 have not entered into our Bank Statements on 1 January 1980 and 1 January 1981.

You have not made any serious attempt to reimburse this sum nor have you given an explanation indicating where the sum of RM70,033.93 have been transmitted.

This will place me and the Board in an embarrassing position and if you do not take immediate steps to reimburse the sum of RM70,033.93 into the Bank Account of Pusat, I will have no choice but to lodge a Police Report with regards to your breach of trust of Pusat monies amounting to RM70,033.93 during the period when you had control of funds going in and out of Pusat Accounts.

Please seek legal advice on this matter but ensure that you deposit the sum of RM70,033.93 into the Pusat Accounts immediately, pending the outcome of the probe into the allegations as ordered by the Board on 8 September 1981, so that your criminal conduct will not affect the running of the Pusat under licence KKA 4045/JD111(37).

If you are unable to reimburse this sum of RM70,033.93 before the next Board Meeting I suggest you tender your resignation as a Director of the Board and await the outcome of the probe by the Board.

Yours faithfully,

Sgd.
S. Pakianathan JP
(Pengerusi)
Pusat Pertolongan

As regards the publication of the defamation it is stated in the statement of claim merely as follows: "By a second letter dated 2 October, 1981 sent to the plaintiff at 4, Tambun Heights, Tambun and copied to the plaintiff c/o Post Box of the Foundation the defendant again falsely and maliciously wrote and published ...". No other person was named in the statement of claim as the person to whom the defamation was published.

In order to constitute publication, the defamatory matter must be published to a third party, and not simply to the plaintiff. By publication is meant the making known of the defamatory matter, after it has been written, to some person other than the person of whom it is written. The uttering of a libel to the party libelled is no publication for the purposes of a civil action: *Wennhak v. Morgan* [1880] 20 QBD at p. 637. A plaintiff will not, as a rule, be permitted to wait until after discovery before naming the persons to whom a libel was published: *Barham v. Lord Huntingfield* [1913] 2 KB 193, CA.

At the trial of this action there was an attempt on behalf of the respondent to show that the defamatory matter contained in the letter was published to Encik Azman and Cik Ramjan Begum. Encik Azman testified that he opened the letter which arrived at the office of the Pusat and

that it was one of his duties to do so. Cik Ramjan Begum testified that she read the letter after it was opened by Encik Abdul Aziz. We find that there is an element of surprise here. Since the publication to Encik Abdul Aziz and Cik Ramjan Begum had not been pleaded, it seems that the defence was placed at a disadvantage in that it had no opportunity to ascertain the procedure as to who, if any, should open letters addressed to persons at the Pusat.

Letter dated 13 October 1981 with a list of proposed resolutions:

The following is a copy of the letter and of the list of proposed resolutions:

Encik Azman bin Abdul Aziz,
d/a Pusat Pertolongan,
Kampong Bercham,
P.O. Box 17, Taman Ipoh,
Ipoh.

Dear Mr. Azman,

Re: **Director's Meeting Dated 21 October 1981**

Enclosed please find a copy of the motion to be tabled at the next Board Meeting for your relevant action.

I wish to draw your attention to s. 156 of the Companies Act 1965 and would be grateful if you could make available the minutes of all proceedings (Book) for any signature as required under the Section referred above.

Yours faithfully,

Sgd.
S. Pakianathan JP
(pengerusi)
Pusat Pertolongan Bhd.

c.c. Directors Pusat Pertolongan Berhad.
Pengarah Kebajikan Masyarakat Negeri Perak.

Pendaftar Syarikat Malaysia, Kuala Lumpur.

Pusat Pertolongan Berhad

(Yayasan yang ditubuhkan dibawah Akta Syarikat 1965)

Directors meeting to be held on 21 october 1981 at Batu Gajah

Agenda (Additional)

As Ordinary Business for the purpose of considering and, if thought fit, passing the following resolutions:

1) That the loans made to Gerald V. Jeremiah, a Director, who was engaged in the full time employment of the company was given without the approval of the company as required under s. 133 of the Company's Act 1965 and that the Directors Jenni Ibrahim, Anthony Mariadass and Hajjah Rahimi Ibrahim who authorised the making of loan be jointly and severally liable to indemnify the company against any loss arising therefrom.

2) That the Director Jenni Ibrahim and former Director Yakcob bin Abdul Rahman Scholer failed to take reasonable steps to ensure that the Profit and Loss Accounts and the Balance Sheets which were laid before the company at its Annual General Meeting held on 29 June 1981 complied with the provisions of the Companies Act 1965 and thereby contravening ss. 170 and 171 of the said Act.

3) *That the Director Jenni Ibrahim and the former Director Yakcob bin Abdul Rahman Scholer stated in the Profit and Loss Accounts and the Balance Sheets laid before the company on 29 June 1981 that the company had made profits amounting to RM24,799.15 and RM45,254.78 for the years ending 31 December 1979 and 31 December 1980 knowing the same to be false and thereby contravening s. 364 of the Companies Act 1965 and or in the alternative have committed jointly or severally a breach of trust of company funds amounting to not less than RM70,033.93.*

4) That the appointment of Azman bin Abdul Aziz as Secretary of the company had been terminated at the Annual General Meeting of the company held on 29 June 1981 and that a new Secretary be appointed to comply with the provisions of the Companies Act 1965.

5) That the decision or resolution of the directors Jenni Ibrahim, Anthony Mariadass, Hajjah Rahimi Ibrahim, Chew Peng Loon and K. Ramasamy as contained in the minutes of the emergency directors' meeting held on 26 August 1981 and their subsequent conduct to remove the executive managing director and in his place appoint Jenni Ibrahim before the expiration of his period of office contravenes the provisions of s. 128 of the Companies Act 1965, and further the sole purpose of the emergency directors' meeting was to pass a resolution of the directors to remove the executive managing director and to secure needless publicity for defamatory purposes even though the Directors were fully aware of the provisions of s. 128(8) of the Companies Act 1965.

6) That the admissions to membership of the Company of Carmen Dass, Freda Jeremiah, Tan Hooi Min, Yusof Azman Aziz, Aloysius Joseph and Frederick Loke as approved by the Board on 15 April 1981 be terminated and their contributions refunded as these admissions to membership contravene s. 4 of the Memorandum of the company and further they are engaged in the full time employment of the company.

Sgd.
S.Pakianathan JP
(Pengerusi)
Pusat Pertolongan Bhd.
Dated 14 October 1981.

Clearly there was a defamatory accusation contained in the proposed resolution No. 3, in that it was alleged that the respondent had committed breach of trust of a sum of RM70,033.93 belonging to the Pusat. In the statement of claim it was alleged that the defamation was published to:

(i) all directors of the Pusat,

(ii) Pengarah Kebajikan Masyarakat Perak, and

(iii) Pendaftar Syarikat Malaysia.

In the amended statement of defence it was averred that the words complained of were true in substance and in fact. In other words, the appellant pleaded justification. Alternatively it was pleaded that the words were published on an occasion of qualified privilege. It was not pleaded that there was no publication to the various persons as alleged in the statement of claim. The respondent filed reply to the amended statement of defence whereby she pleaded that the appellant was actuated by express malice to publish the defamation and gave particulars of the express malice.

The burden lies upon the defendant to establish justification. The burden does not lie on the plaintiff to prove that the defamatory words are false, because the law presumes this in his favour: *Bett v. Lawes* [1882] 51 LJQB at p. 361. To establish justification the defendant

must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true: *Peters v. Brodlaugh* [1884] 4 TLR 467. At the trial of this action the appellant did not make a serious attempt to prove justification. On the contrary, at the end of his examination-in-chief he stated: "I still do not know where all the money is". So his plea of justification fails.

However, there are occasions upon which, on grounds of public policy and convenience, a person may, without incurring legal liability, make statements about another which are defamatory and in fact untrue: *Watt v. Longsdon* [1930] 1 KB 130. These occasions are called occasions of qualified privilege. A communication made *bona fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty although it contains a criminatory matter which, without this privilege, would be slanderous and actionable: *Harrison v. Bush* [1855] 5 E & B at p. 348. The duty may be legal, social or moral, and the person to whom the communication is made must have a corresponding interest or duty to receive it. The reciprocity is essential: *Adam v. Ward* [1917] AC at p. 334.

In *Pittard v. Oliver* [1891] QBD 474 the facts were as follows. The plaintiff was clerk to the guardians of the Brendford Union, and in this capacity had received from time to time sums of money for which it was his duty to account to the guardians. In 1888 there was a sum of money in his hands belonging to the guardians, and a dispute arose as to the state of accounts between him and them, the plaintiff contending that a larger sum was due to him from the guardians than that which he had in his hands belonging to them. The accounts were submitted to an auditor, and after he had made his report the plaintiff was called upon to explain his accounts, when he adhered to his contention that there was a balance due to himself from the guardians. In the end the plaintiff resigned his appointment. At a meeting of the board of guardians it was proposed that a sum of £39.16s.8d, the amount of salary due to the plaintiff, together with an additional sum of £50 should be paid to the plaintiff in settlement of his claim against the board. The defendant who admittedly knew nothing of the plaintiff personally, moved an amendment that £39.16s.8d only be paid to the plaintiff in full settlement without prejudice. In moving the amendment the defendant remarked:

> The fierce light which had lately been thrown upon public boards prevented them from condoning in any way the defalcation of an unfaithful servant. Surely they could defend themselves and the public against a man who for years had been robbing public money by not giving him one farthing more than he could claim.

Shortly after the meeting the plaintiff brought an action against the board of guardians to recover the amount which he claimed to be due to him, to which the guardians counter-claimed for moneys which they alleged to be due to them from the plaintiff. The action was determined in favour of the plaintiff for the whole amount claimed by him and also in his favour on the counter-claim. Thereupon the plaintiff brought the action for slander. Mathew J held that the occasion on which the words were spoken was privileged. The Court of Appeal dismissed the plaintiff's appeal. Per Lord Esher:

> ... a discussion took place at a meeting of the board with reference to the plaintiff, who had been a servant of the board, and a question arose whether the salary which was due to him should be paid in full, or whether the guardians should keep back a part of it on the ground that there had been defalcations by their servant of money which was in his hands for his masters, the guardians. That is a matter which, it is not denied, it was the duty of the guardians to discuss; they were responsible to the ratepayers for the expenditure of their money; they

were in the position of trustees for the rate-payers, and it was their duty to see that the money was properly expended; therefore, what the defendant and other guardians did in giving their opinions, was not only their privilege, but their duty.

We have shown earlier that the Pusat was bound by the regulations provided in the Private Rehabilitation Centre Rules 1981. In our opinion the position of the Board of Directors of Pusat is similar to that of the board of guardians in Pittard's case in that the Board of Directors was responsible to the public for the expenditure of the money collected by it for the charitable purpose, that it was in the position of trustees for the donors and it was its duty to see that the money was properly expended and not misappropriated, and it was not only its privilege but its duty to discuss on any alleged misappropriation of money entrusted to it. Therefore the publication by the appellant of the defamatory matter contained in the proposed resolution No. 3 to the members of the Board of Directors would, in our opinion, be protected by qualified privilege because the appellant would have an interest and duty to send to the members any complaint of breach of trust of money belonging to the Pusat and they also had interest and duty to receive it for the purpose of discussing it at their meeting. In our opinion even the publication to the Pengarah Kebajikan Masyarakat would be similarly protected because he was also sometimes required to take part in the deliberations of the Board. But a copy of the proposed resolution was also published to the Pendaftar Syarikat Malaysia, and it was not shown by the appellant that the Pendaftar had an interest or duty to receive it. In our judgment the publication to the Pendaftar was libellous.

The protection afforded by the law to a publication made on an occasion of qualified privilege is not an absolute protection but depends on the honesty of purpose of the person who makes the publication. If he is malicious, that is, if he uses the occasion for some other purpose than that for which the law gives protection, he will not be able to rely on the privilege. If the publication takes place under circumstances which create a qualified privilege, in order to succeed the plaintiff has to prove express malice on the part of the defendant. Broadly speaking express malice means malice in the popular sense of or desire to injure the person who is defamed. To destroy the privilege the desire to injure must be the dominant motive for the defamatory publication. Knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in *bona fide* protection of his own legitimate interests. The mere proof that the words are false is not evidence of malice, but proof that the defendant knew that the statement was false or that he had no genuine belief in its truth when he made it would usually be conclusive evidence of malice. If the defendant publishes untrue defamatory matter recklessly without considering whether it be true or not, he is treated as if he knew it to be false. In ordinary cases, what is required on the part of the defamer to entitle him to the protection of the privilege is honest belief in the truth of what he published. But if he was moved by hatred or a desire to injure and used the occasion for that purpose, the publication would be maliciously made even though he believed the defamatory statement to be true. Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: *Lee v. Ritchie* [1904] 6 F 642.

Ajaib Singh J made a finding that there was malice on the part of the appellant. We agree that there was evidence to support that finding. The appellant had already informed the Chief Police Officer about the unsatisfactory state of the accounting and had asked for the assistance of the police to investigate. There is no evidence to show that he enquired from

the police of the result of investigation. Two months after writing to the Chief Police Officer he already published the accusation against the respondent. Probably the police had no sufficient time to complete investigation yet. The learned Judge also made a finding that the appellant was vindictive and malicious as the result of his having been removed as executive managing director and replaced by the respondent. Therefore in our judgment the appellant's claim of privilege in respect of the publication of the accusation contained in the proposed resolution is defeated by the proof of his malice.

The learned Judge fixed the amount of damages at RM30,000 on the basis of his finding that all of the publications were libellous. We have shown that there was libel on one occasion only, and therefore we order that the amount be reduced to RM15,000. Save that the amount of the damages is so reduced, the appeal is dismissed. As regards cost we award to the appellant one-half of the taxed cost in this appeal.

Also found at [1988] 1 CLJ 771